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Supreme Court, U. S.
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JAMES D. MAHER,
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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1916.

No. [redacted] 674

THE PITTSBURGH, CINCINNATI, CHICAGO AND ST. LOUIS RAILWAY COMPANY, Plaintiff in Error,

vs.

ALVIN J. FINK, Defendant in Error.

BRIEF OF THE PLAINTIFF IN ERROR.

EDWIN P. MATTHEWS,
WILLIAM M. MATTHEWS,
Attorneys for Plaintiff in Error.

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1915.

No. 754.

THE PITTSBURGH, CINCINNATI, CHICAGO AND ST. LOUIS RAILWAY COMPANY, PLAINTIFF IN ERROR,

vs.

ALVIN J. FINK, DEFENDANT IN ERROR.

BRIEF OF THE PLAINTIFF IN ERROR.

Statement of Facts.

This action is to recover from a consignee a balance of freight charges which had not been claimed or collected at the delivery of the goods.

The cardinal facts are as follows:

In September, 1911, the plaintiff, a common carrier by railroad engaged in interstate commerce, delivered to the defendant, as consignee, a shipment of 300 pounds

of Indian curios, the legal rate, as fixed by the schedule of rates duly published, filed, and posted in accordance with the acts of Congress, being $30, computed as follows: $5 per hundred pounds at the double first-class rate or $10 per hundred pounds. The plaintiff erroneously used, in assessing the freight charges collected, the first-class rate of $5 per hundred pounds, and therefore demanded and received from the defendant, upon the delivery of the goods to him, but $15 instead of $30, and this is to recover the balance of $15 which, about one year after delivery of the shipment, the plaintiff demanded of the defendant.

The curios were consigned to the defendant by a person at Los Angeles, California, whose name is not disclosed by the record. The defendant says that the transaction was a trade; that he had sent a collection of gold coins to the consignor in exchange for the curios, and that the coins were held by the postmaster at Los Angeles until the curios arrived in Dayton and were found satisfactory, and that thereupon the coins were released.

The nature of the transaction between the consignor and consignee was not known to the plaintiff.

The shipment was consigned to the defendant on the regular straight bill of lading. The carrier, in accordance with the usual custom, considered the consignee as the owner and person responsible for charges.

Specification of Error.

The Court of Appeals of Montgomery County, Ohio, erred in holding that the consignee of freight transported in interstate commerce is not liable for the difference between the amount demanded by the carrier as a condition precedent to delivery and the legal rate, when the consignee has accepted the goods knowing that the carrier looks to him for payment.

BRIEF.

It is admitted that the defendant did not pay the legal rate.

The sole question involved in the case is whether or not the consignee is the person liable for the legal rate, after having accepted the goods, when a lesser amount was demanded as a condition precedent to delivery.

Under the broad provisions of the Interstate Commerce Act one who has obtained from a common carrier by railroad transportation of goods from one State to another at a rate, specified in the bill of lading, less than the published schedule rate, is not entitled to recover the goods or damages for their detention upon the tender of payment of the amount of charges named in the bill of lading or any sum less than the schedule charges. The consignee can become entitled to the goods only by the payment or tender of payment of such amount.

Texas & Pacific Ry. Co. *vs.* Mugg and Dryden, 202 U. S., 242.

The consignee in the case at bar, after having accepted the goods, was, within the meaning of the limitation of the Mugg case, a person who has obtained transportation of goods passing from one State to another.

The consignee, having accepted the freight, is presumed to be the owner and the person responsible for the transportation charges and will not be heard, after delivery, to deny such ownership.

Hutcheson on Carriers, sec. 443 *et seq.*
4 Elliott on Railroads, sec. 1559.

The consignee upon acceptance of the goods became liable upon an implied contract to pay the legal charges, and it

is not to be presumed that he intended to do other than a lawful act.

Union Pac. R. R. Co. *vs.* American Smelting Co., 202 Federal, 720.

Whether a consignee is the absolute owner of a shipment of goods or not is immaterial, because by acceptance he becomes a party to the contract between the consignor and the carrier.

Penna. *vs.* Titus, 216 N. Y., 17.
N. Y. *vs.* Samson, 110 N. E., 964.
N. Y. *vs.* Whiting, 215 Mass, 36.
Central of Ga. *vs.* Wellingbaum, 8 Ga. App., 817.

The regulation by Congress of interstate commerce takes that subject out of the realm of ordinary contracts in some respects and places it upon the rigidity of a quasi-statutory enactment.

Respectfully submitted,

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